

### **REMARKS/ARGUMENTS**

Claims 5, 14-16, 34-36, 40 and 46 have been amended. Subsequent to the entry of the present amendment, claims 5-7, 14-16, 21-29, 34-36 and 46-48 are pending and at issue. These amendments and new claims add no new matter as the claim language is fully supported by the specification and original claims

#### **Rejections under 35 U.S.C. § 102**

Claims 5, 14-16, 34, 46 and 48 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Larsen et al. (5,782,832). Applicants respectfully traverse this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicants have amended claim 5 to clarify that the implant includes a body having a shaft, that the spacer is rotatably mounted on the shaft, and that the threaded screw is rotatably mounted on the shaft. Independent claims 14, 34, 40, 46 and 48 have been similarly amended, so the arguments presented below also apply to these claims.

Larsen shows an implant 400 that includes an upper support member 402 and a lower support member 404. "Support members 402, 404 are interconnected through a pin and slot arrangement" and a "pin 432 traverses each slot and opening arrangement to connect the upper support member 402 to the lower support member 404" (Larsen, col. 8, lines 29-37, Fig. 22). Larsen further shows that implant 400 includes a camming arrangement for moving upper and lower support members 402, 404. The camming arrangement includes a camming block 412 and a screw 418 that "threadably engages an internal threaded bore 422 of lower support member 404" (Larsen, col. 8, lines 16-28, Fig. 22).

Applicants assert that one or more of the elements in amended claim 5 are missing from Larsen. A review of Larsen fails to disclose a body with a shaft (the word "shaft" does not even appear in the Larsen patent) and also fails to disclose that the upper and lower support members 402, 404 (alleged by the Office Action as first and second portions of a spacer) are

rotatably mounted on the shaft. In addition, Larsen fails to disclose a threaded screw rotatably mounted on the shaft between the first portion and second portion.

For at least the reasons discussed above, Larsen does not teach each and every element of the claims. Therefore, amended independent claims 5, 14, 34, 40, 46 and 48, along with their dependent claims, are not anticipated by Larsen. Accordingly, for at least the reasons given above, Applicants respectfully request withdrawal of this rejection.

**Rejections Under 35 U.S.C. § 103**

Claims 6, 7, 35, 36, 40, 41 and 47 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Larsen et al. (5,782,832). Applicants respectfully traverse this rejection.

Applicants have shown above that Larsen does not teach each and every element of amended independent claims 5, 14, 34, 40, 46 and 48 and these claims should be allowable over Larsen. Claims 6, 7, 35, 36, 40, 41 and 47 depend on claims 5, 14, 34, 40 and 46, and should be allowable for the same reasons listed above. Accordingly, Applicants respectfully request that the rejection of the claims under 35 U.S.C. §103 be withdrawn.

**Allowed Claims**

Applicants appreciate the indication that claims 21-29 are allowed over the prior art. With the amendments above, all of the pending claims should now be allowable over the prior art.

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PATENT

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6100.

Respectfully submitted,



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